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Back to the Future

“Retro” trade governance and the future of the multilateral order¹

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In December 2015 after 14 years of what—by any measure—had been a torturous process, the World Trade Organization’s (WTO) Doha round of multilateral trade negotiations was finally set to one side. Utilising a negotiating process widely regarded as the most inclusive in WTO history,² members agreed at the organisation’s 10th ministerial conference (held in Nairobi, Kenya) to “park” their not inconsiderable attempts to agree a member-wide deal opening the way for them to embark instead on a series of single-issue “plurilateral” negotiations.

The round had been designed to help improve the trade performance of developing countries while also adding welfare gains across-the-board but had instead resulted in very little of substance. Yet, rather than being greeted with consternation and regret—as had been the outcome of many previous WTO ministerial conferences that had agreed to disagree on what to do with the Doha round—the Nairobi conclusion was met with widespread relief and, in some quarters, elation. As the *Financial Times* editorial of 21 December 2015 put it,

After a death scene so drawn-out it would have done credit to a Victorian melodrama, the curtain has finally come down on one of the longest-running farces in global policymaking. The so-called Doha round ... was last week declared dead by World Trade Organisation [sic] members after nearly a decade spent comatose. The admission that Doha is no more is welcome: the talks were wasting a lot of breath, time, energy and air miles.³

¹ I am grateful to the three anonymous reviewers for their insights and comments, which helped to strengthen the argument.

² Rorden Wilkinson, Erin Hannah and James Scott, ‘The WTO in Nairobi: the demise of the Doha Development Agenda and the future of the multilateral trading system’, *Global Policy*, 7: 2 (May 2016), pp. 247-255. Also, Daniel Flentø and Stefano Ponte, ‘Least-developed countries in a world of global value chains: are WTO trade negotiations helping?’, *World Development*, 94 (June 2017), pp. 369.

³ ‘The Doha round finally dies a merciful death’, *Financial Times*, 21 December 2015. Available at: <https://www.ft.com/content/9cb1ab9e-a7e2-11e5-955c-1e1d6de94879> For a different editorial view see, ‘India needs to realise free trade is a myth’, *Hindustan Times*, 23 December 2015.

Heather Stewart, writing in *The Guardian*, was no less cutting in her assessment.

Over the past few days, trade ministers from scores of countries have spent hours flogging the long-dead horse that is the Doha round of global trade talks in Nairobi – and hardly anyone noticed.⁴

For all of the relief expressed by the delegates and observers gathered at the closing ceremony in the Kenyatta International Convention Centre⁵ and elsewhere, Nairobi rendered derelict the “complex cathedral” former WTO Director General Pascal Lamy characterised as the architecture of the Doha round, and “its own worst enemy”.⁶ While the round’s abandonment may have been a source of celebration for some, the lack of a substantive outcome has inevitably encouraged jaundiced assessments of recent successes in multilateral trade politics.⁷ Indeed, when weighed against what was originally envisaged for the round’s conclusion and the actual contribution of the negotiations to increasing the volume and value of trade for individual member states, Doha looks to have been an abject failure, one that floundered on successive crises resulting from the inability of members to traverse differing understandings of the purposes and intended outcomes of the round.⁸

Yet, there is another way to assess the past decade and a half of negotiations; one that requires looking beyond substantive outcomes—or the lack thereof—to ask what effect

<http://www.hindustantimes.com/editorials/completely-free-trade-is-a-myth/story-CRPQxVs9i8MH2C7qj4488L.html>

⁴ Heather Stewart ‘Doha is dead. Hopes for fairer global trade shouldn’t die, too’, *The Guardian*, 20 December 2015. Available at: <https://www.theguardian.com/business/2015/dec/20/doha-is-dead-hopes-for-fairer-global-trade-shouldnt-die-too>; also see Kevin Watkins, ‘What next for poor countries fighting to trade in an unfair world?’, *The Guardian*, 22 December 2015. Available at: <https://www.theguardian.com/global-development/2015/dec/22/doha-round-world-trade-organisation-nairobi-poor-countries>

⁵ Author observation during the closing ceremony.

⁶ Lamy quoted in Robert E. Baldwin, ‘Trade negotiations within the GATT/WTO framework: a survey of success and failures’, *Journal of Policy Modeling*, 31: 4 (2009), p. 524.

⁷ For example, Mihir Kanada, ‘Chronicles of the Doha wars: The battle of Nairobi—appraisal of the tenth WTO ministerial’, *Strathmore Law Journal*, August 2016, pp. 155-164; and Bryan Mercurio and Antoine Martin, ‘Doha Dead and Buried in Nairobi: Lessons for the WTO’, *Journal of International Trade Law and Policy*, 16: 1, doi: 10.1108/JITLP-01-2017-0001

⁸ For an extensive insight into the differing perceptions of trade policy communities see Silke Trommer, ‘The WTO in an era of preferential trade agreements: Thick and thin institutions in global trade governance’, *World Trade Review*, 16: 3 (2017), pp. 501-526.

the Doha negotiations have had on the way global trade is governed. This shift in gaze brings into focus longer run issues of institutional development. It also changes the way crises are understood, from disruptive incidents hampering outcomes to catalytic events spurring institutional change and evolution. Thus, rather than episodes in the lingering demise of the Doha round, the moments of crisis and intransigence that beset the negotiations are revealed as key instances in which the governance of global trade was contested and its future direction renegotiated.⁹

When viewed in this way, Nairobi takes on a different light. Rather than an admission of the failure of members to agree a far-reaching trade deal, it signals the culmination of a terse political process that replaced one form of trade governance that had become dysfunctional (for the industrial countries at least) with another that is more expeditious (again, as far the industrial states are concerned). This outcome saw trade governance move away from a system wherein all members sought to participate in—and agreed to be bound by—a universal deal (known as a “single undertaking”) to one in which deals could be reached “plurilaterally”—that is, among a small subset of members. The result has been to remove the capacity of one or a limited number of members to act as blockers in the onward march of liberalisation into new areas—as a number of developing countries had been.¹⁰ The *quid pro quo* for this change, however, was an agreement that while new trade deals could be negotiated plurilaterally, any attempt to pursue a new multilateral effort would first require that the Doha mandate be revisited.¹¹ Yet, it is precisely because Doha had become so caustic that any return to the round is unlikely; and while the Nairobi outcome may place a multilateral deal off limits for the foreseeable future, it does open up the possibility that the paralysing effects of 14 years of largely unsuccessful negotiations will be unlocked and the WTO’s negotiating function rehabilitated.

⁹ For an extended discussion of the locomotive effects of crises on the long run evolution of the multilateral trading system see Rorden Wilkinson, *The WTO: Crisis and the Governance of Global Trade*, (London: Routledge, 2006). In a similar vein see Valbona Muzaka and Matthew Louis Bishop, ‘Doha stalemate: The end of trade multilateralism?’ *Review of International Studies*, 41: 2, (2015), pp. 383-406.

¹⁰ See Kristen Hopewell, *Breaking the WTO: How Emerging Powers Disrupted the Neoliberal Project*, (Stanford: Stanford University Press, 2016); and J. P. Singh, *Sweet Talk: Paternalism and Collective Action in North-South Trade Relations*, (Stanford: Stanford University Press, 2017).

¹¹ WTO, “Nairobi Ministerial Declaration”, WWT/MIN(15)/DEC, 19 November 2015, paragraph 34. Available at: https://www.wto.org/english/thewto_e/minist_e/mc10_e/mindecision_e.htm

This rehabilitated does not come without costs, however. For the industrial countries, the abandonment of the single undertaking brings with it a reduction in the scale of the trade gains that can be realised. For developing countries, the setting aside of the commitment for all members to agree to—and be bound by—all aspects of an agreement erodes their capacity to ensure that the rectification of past trade anomalies forms part of any new bargain, which was a key demand in the run-up to the launch of the Doha round.¹² This is because very few developing countries are likely to be parties to plurilateral agreements in areas of interest to the industrial states, who will be the drivers of any such deals.

However, the abandonment of the single undertaking has another effect. By locking developing countries out of any new negotiations it erodes their capacity to have a say in the future shape and direction of the multilateral trade regime. This is quite a different outcome from that originally envisaged when the WTO was established and the Doha round launched. But it is one that better enables the industrial states to regain control of a trade agenda that has failed to keep abreast of changes in global production and consumption. As United States Trade Representative (USTR) Michael Froman put it ahead of the Nairobi meeting,

If global trade is to drive development and prosperity as strongly this century as it did in the previous, we need to write a new chapter for the World Trade Organisation [sic] that reflects today's economic realities. It is time for the world to free itself of the strictures of Doha.¹³

Importantly, this new form of trade governance is one that is not out of kilter with—or distinct from—previous ways of governing global trade.¹⁴ Rather, it is a return to a form

¹² See John S. Odell, 'Breaking deadlocks in international institutional negotiations: The WTO, Seattle, and Doha', *International Studies Quarterly* 53: 2 (2009), pp. 273-299 for an extended discussion.

¹³ Michael Froman, 'We are at the end of the line on the Doha Round of trade talks', *Financial Times*, 13 December 2015. Also, Daniel W. Drezner, 'The United States tried to euthanize the Doha round: what we can learn from U.S. efforts to apply the coup de grace to multilateral trade negotiations', *The Washington Post*, 14 December 2015.

¹⁴ See, for instance, Gilbert R Winham, *International Trade and the Tokyo Round*, (Princeton: Princeton University Press, 1987).

of trade governance analogous to earlier, pre-WTO forms of system management: hence, it is “retro” in constitution.

Thus, the cumulative effect of the crises that beset the Doha round has been to move global trade governance away from the more inclusive broad-based system that emerged from—and which was very much a solution to the ills of—the Uruguay round and which shaped trade politics in the WTO’s early years, to a system that returns to a reliance on agreements reached among a limited subset of members to drive forward liberalisation and the agreement of new trade rules, and which is once again better suited to securing the evolving commercial interests of the industrial states than it is to solving the problems of their developing counterparts. The result is to consolidate and preserve an iniquitous way of distributing trade gains that has been a characteristic of trade governance since the General Agreement on Tariffs and Trade (GATT) was first negotiated in 1947.¹⁵

Thus, the aim of this paper is to encourage a departure from a focus on the disruptive effects of negotiating crises and their role in hampering the realisation of specific outcomes in the multilateral trading system—and the Doha round particularly—to instead illustrate their generative effect on the refinement and evolution of global trade governance. In this way, moments of crises and intransigence are understood as comprising—individually and in concert—a capacity to act as spurs in the overall development of global trade governance which can bring about substantive change but which have historically (both in the recent, as well as the relatively distant, past) tended to reinforce a bias towards the interests of the dominant commercial powers in that system.

In pursuit of its aims, the paper begins by exploring some of the conceptual aspects of the role that negotiating crises play in promoting change and encouraging evolution in

¹⁵ See, among others, Sylvia Ostry, ‘Asymmetry in the Post-Doha Trading System’ in Michele Fratianni, John J. Kirton and Paola Savona (eds.), *Financing Development: The G8 and UN Contribution*, (Aldershot: Ashgate 2007); Arvind Subramanian and Shang-Jin Wei, ‘The WTO promotes trade, strongly but not evenly’, *Journal of International Economics*, 72: 1 (May 2007), pp. 151-175; and Sanoussi Bilal, Philippe De Lombaerde and Diana Tussie (eds.), *Asymmetric Trade Negotiations*, (London: Routledge, 2011). Also, Alan Matthews, ‘Developing countries’ position in WTO agricultural trade negotiations’, *Development Policy Review*, 20: 1 (2001), pp. 75-90.

the multilateral trading system. It then establishes how the character of global trade governance has evolved so that we are able to see how the Nairobi outcome signals a return to an earlier form of system regulation and which renders the Uruguay round outcome as unique and unlikely to be repeated. Thereafter, the paper traces the generative effects of the crises that beset the Doha round focusing on those trends, entanglements and outcomes pertinent to the development of the argument. In the final section, the paper considers the effects of this changed form of governance for the future of the multilateral order.

Crisis, evolution, change

Novel as they may seem, moments of heightened political contestation, the collapse of negotiations, and the periods of intransigence that have followed have been endemic features of trade negotiations since the multilateral trading system's inception.¹⁶ These events are usually attached to discrete occurrences in on-going rounds of negotiation or the launch thereof—such as the WTO's Seattle, Cancún and Hong Kong ministerial conferences or informal but nonetheless high-level gatherings of state representatives such as the July 2008 Geneva mini-ministerial meeting—or else they are attached to wider events in the global political economy.¹⁷

Taken individually, each crisis can act as a disruptor in the overall process of negotiating, either by causing a collapse in the negotiations or else ushering in a period of stasis. Yet, when taken in the *longue durée* of the multilateral trading system they play a different role: as individual instances in a wider process of negotiating that can signal moments when change can or has the capacity to take place but in which entrenched interests have tended to prevail. That change may be a refinement of existing ways of operating; it may generate an outcome that alters slightly the balance of forces among trading partners; or it may be that the capacity for change is ultimately realised. What is important, however, is that in each instance crises are bound up with institutional

¹⁶ Wilkinson, *The WTO: Crisis and the Governance of Global Trade*.

¹⁷ See, for example, John S. Odell (2002), 'The Seattle impasse and its implications for the WTO', in Daniel Kennedy and James Southwick (eds.), *The Political Economy of International Trade Law: essays in honor of Robert Hudec*, (Cambridge: Cambridge University Press). Also Robert E. Hudec, 'GATT or GABB? The future design of the General Agreement on Tariffs and Trade', *Yale Law Journal*, 80: 7 (1971), pp. 1299-1386.

evolution. While that evolution may be progressive or regressive—or somewhere in between—it will almost certainly unfold in a manner consistent with or in direct relation to the purposes for which the institution was originally created and the relations of power upon which it was founded and continues to operate.

It is important to note that crises are endemic features of the multilateral trade regime because it is a system of governance generated by the outcomes of competitive negotiations.¹⁸ Member states are pitched against one another in strategic games wherein bargains are negotiated through the deployment of various means (strategic, material and otherwise), where the goal is to extract as much value as can be achieved while giving away as little as possible in institutional confines that shape participant interaction. The bargains these interactions produce generate trade opportunities, rules governing the conduct of negotiations, procedures for the administration of the system, and precedents and behavioural norms that affect all aspects of the system's operation. They also all inevitably reflect power asymmetries and the distribution of capabilities among member states.¹⁹

Yet, it is not competition alone that lends the global trade regime a crises-laden character. It is also because the creation of the multilateral trading system imbued its architects—primarily the United States and, in its early years the United Kingdom, but also the industrial countries more generally—with certain advantages that later entrants to the system have sought to challenge and redress.²⁰ These advantages arose not only from the construction of rules that reflected dominant commercial interests, but because those rules put in place measures to restrict the benefits of institutional

¹⁸ See Rorden Wilkinson, *What's Wrong with the WTO and How to Fix it*, (Cambridge: Polity, 2014), pp. 45-78.

¹⁹ Richard H. Steinberg, 'The hidden world of WTO governance: a reply to Andrew Lang and Joanne Scott', *European Journal of International Law*, 20: 4 (2009), pp. 1063-1071. Also Andrew Lang and Joanne Scott, 'The hidden world of WTO governance', *European Journal of International Law*, 20: 3 (2009), pp. 575-614.

²⁰ See Richard N. Gardner, *Sterling-Dollar Diplomacy: Anglo-American collaboration in the reconstruction of multilateral trade*, (Oxford: Clarendon Press, 1956); and Gardner Patterson, *Discrimination in International Trade: The Policy Issues 1945-1965*, (Princeton: Princeton University Press, 1966).

membership to new entrants.²¹ It is this continual privileging of the interests of the system's architects that has, in turn, ensured that the multilateral trading system remains a site of contestation in which newer entrants challenge their established counterparts.

The effects of this system have been profound and have been observed by economists and political economists alike. Correcting earlier work in economics that raised a question mark over the material benefit of global trade agreements, Arvind Subramanian and Shang-Jin Wei show empirically that GATT/WTO membership has indeed had a substantial effect on trade promotion.²² But they also show that these benefits have been so unevenly distributed in favour of the advanced industrial states that the magnitude of the gain from GATT/WTO membership has been vastly underestimated.²³ Elsewhere, scholars have shown how distortions resulting from trade-offs made between participating states have contributed to the perpetuation of a system of iniquitous opportunity distribution wherein the lion's share of trade opportunities have accrued to the GATT/WTO's oldest and most commercially significant members.²⁴ The result, as Thomas Pogge has noted, is a system of global trade governance in which the leading industrial states "enjoy a crushing advantage".²⁵

Thus, the development of the multilateral trading system has been a reflection of the outcomes and accommodations that have resulted from contestations between dominant and non-dominant participants caused by the competitive nature of negotiations and attempts to redress past iniquities. Certainly there are other aspects of the system that appear not to be based on competition or contestation—dispute

²¹ See Robert O. Keohane, *Power and governance in a partially globalized world*, (London: Routledge, 2002), pp. 253-254; Robert W. Cox, 'Gramsci, hegemony and international relations: an essay in method', *Millennium* 12: 2 (1983), pp. 172-173.

²² Subramanian and Wei, 'The WTO promotes trade, strongly but not evenly', pp. 151-175.

²³ See Andrew K. Rose, 'Do we really know that the WTO increases trade?', *American Economic Review* 94: 1, 2004, pp. 98-114.

²⁴ See Sylvia Ostry, *The Post-Cold War Trading System*, (London: University of Chicago Press, 1997); and author; Tony Heron, *The Global Political Economy of Trade Protectionism and Liberalization: Trade Reform and Economic Adjustment in Textiles and Clothing*, (London: Routledge, 2012); and Ben Richardson, *Sugar: Refined Power in a Global Regime*, (Basingstoke: Macmillan, 2009). The date at which a country joins the GATT/WTO also has asymmetrical effects. See Mark S. Copelovitch and David Ohls, 'Trade, Institutions, and the Timing of GATT/WTO Accession in Post-Colonial States', *Review of International Organizations*, 7: 1, 2012, pp. 81-107.

²⁵ Thomas Pogge, *World Poverty and Human Rights*, (Cambridge: Polity, 2008), 2nd edition, pp. 26-27.

settlement, trade policy review, and data and knowledge gathering. It is, however, important to remember that each of these attributes is itself an outcome of a negotiation and a product of the functioning of this competitive and adversarial system, and that each also reflects the distribution of power among member states. Therefore, it is by observing moments of contestation and understanding their causes, consequences and significance that a more accurate understanding of how the institution has evolved can be ascertained. And it is in this context that the passage of the Doha negotiations and the Nairobi outcome must be understood.

The evolving nature of global trade governance

To understand how crises during the Doha round have had a transformative effect on the way global trade is governed and how this has augmented—rather than eroded—the tendency to produce asymmetrical outcomes, we need to recover a little of the history of the multilateral trading system. This, in turn, enables us to see how the Nairobi outcome ushers in a return to an older, more selective “retro” way of governing trade that is better able to maintain and preserve existing trade advantages at the expense of the more universalistic Uruguay outcome.

The modern system of multilateral trade regulation over which the WTO presides was itself borne out of a series of crises. At its creation, global trade governance took the form of a limited agreement (the GATT) among 23 contracting parties designed for the specific purpose of liberalising trade in goods among the industrial countries and kick-starting the process of dismantling the protectionism that characterised the inter-war world economy. It was also the outcome of a crisis in the negotiations for a broader International Trade Organization (ITO) that ultimately proved unresolvable and which resulted in the organisation’s still birth; and a series of terse political contestations among the GATT’s original contracting parties during the first round of negotiations almost floundered on disagreements on how to deal with agriculture and imperial preference and had a profound effect on what was, and what was not included in the General Agreement’s commercial remit—to which we return momentarily.²⁶

²⁶ See, among others, Richard N. Gardner, *Sterling-Dollar Diplomacy: Anglo-American collaboration in the reconstruction of multilateral trade*, (Oxford: Clarendon Press, 1956); William Adams Brown Jr., *The United*

Given the role the GATT was designed to play, its architecture inevitably reflected the interests of its creators. As the dominant party and primary architect, the GATT's principal purpose was to assist the United States in the realisation of post-war economic gains as well as to forestall the onset of a post-war recession as its economy moved from a wartime to a peacetime footing. This meant opening up overseas markets for its manufactured, semi-manufactured and capital goods as well as providing the financial wherewithal to enable its war-torn allies to buy US products. The GATT was to provide the means by which markets were to be opened while the nascent World Bank would oversee European reconstruction (albeit later circumscribed by Marshall Aid) and the International Monetary Fund (IMF) would provide payment stability through its administration of a system of fixed exchange rates.²⁷

Thereafter, the practices and procedures governing the conduct of world trade evolved steadily over time and the striking of bargains during trade rounds placed new layers of regulation on top of those previously negotiated. Crucially, however, agreements were only reached among a subset of commercially significant members (see table 1). These agreements—which we would now characterise as “plurilateral”—²⁸ led to portrayals of the GATT as a “trader’s club” functioning for the benefit of the biggest trading nations alone.²⁹ As Robert Hudec put it, the GATT was the “property” of the industrial countries, “a place where [they] ... could go off to do business by themselves”.³⁰ This remained the case throughout consecutive negotiations.

States and the Restoration of World Trade, (Washington: Brookings Institution, 1950); Karin Kock, *International Trade Policy and the GATT, 1947-1967*, (Stockholm: Almqvist and Wiksell, 1969); Clair Wilcox, *A Charter for World Trade*, (London: Macmillan, 1949); William Diebold Jr., ‘The End of the ITO’, *Essays in International Finance*, 16, (International Finance Section, Department of Economics, Princeton University, 1952); and Richard Toye, ‘The Attlee Government, the Imperial Preference System and the Creation of the GATT’, *The English Historical Review*, 118: 478 (2003), pp. 912-939.

²⁷ See William L. Clayton, ‘GATT, the Marshall Plan, and OECD’, *Political Science Quarterly*, 78: 4 (1963), pp. 493-503.

²⁸ For recent interventions see Bernard Hoekman and Petros Mavroidis, ‘WTO ‘à la carte’ or ‘menu du jour’? Assessing the case for more plurilateral agreements’, *European Journal of International Law*, 26: 2 (2015), pp. 319-343; and Kenneth Heydon, ‘Plurilateral agreements and global trade governance: a lesson from the OECD’, *Journal of World Trade*, 48: 5 (2014), pp. 1039-1055.

²⁹ Gerard Curzon and Victoria Curzon, ‘GATT: Trader’s Club’, in Robert W. Cox and Harold K. Jacobson (eds.), *The Anatomy of Influence: Decision Making in International Organization*, (London: Yale University Press, 1974), 2nd print.

³⁰ Robert E. Hudec, *The GATT Legal System and World Trade Diplomacy*, (Salem, MA: Butterworth Legal Publisher, 1990), second edition, p. 57.

The Tokyo round (1973-1979) saw for the first time pressure for a greater number of participants to be bound by the outcome of the negotiations.³¹ The driving rationale here was to increase the gains from trade negotiations, particularly for the industrial countries, by binding a greater number of contracting parties to market access and related commitments. But to do so required a change in the practice of governing global trade, moving from agreements among a subset of participants to a more universalistic system. These ambitions, however, failed to come to fruition. During the negotiations, stand-offs between the industrial countries and their developing counterparts in areas such as non-tariff barriers, voluntary export restraints, the multi-fibre arrangement, safeguards, “market disruption” and “aggressive export practices”, among others, led to the abandonment of these efforts and resulted instead in the agreement of a number of sector specific plurilateral agreements.³²

Table 1–Trade rounds under the GATT and WTO

Date	Round	No. of contracting parties exchanging concessions
1947	Geneva	23 out of 23
1949	Annecy	33 out of 33
1950-1951	Torquay	29 out of 33
1956	Geneva	22 out of 39
1960-1961	The Dillon round	22 out of 42
1964-1967	The Kennedy round	37 out of 76
1973-1979	The Tokyo round	44 out of 84
1986-1994	The Uruguay round	123 out of 123
2001-2015	The Doha round	<i>abandoned</i>

A second attempt to bind a greater number of participants was tried during the Uruguay round (1986-1994). Unlike the Tokyo round endeavour, the Uruguay negotiations proved successful and concluded with a single undertaking. This ranged across the full spectrum of the negotiations taking in disciplines on merchandise trade, services, agriculture, and trade-related aspects of intellectual property rights and

³¹ See paragraph 1 of the Tokyo Declaration, 14 September 1973. Available at: http://www.cvce.eu/content/publication/1999/1/1/641c04eb-2900-4ac3-b07d-1a0467477cdc/publishable_en.pdf

³² See Rorden Wilkinson and James Scott, ‘Developing country participation in the GATT: a reassessment’, *World Trade Review*, 7: 3 (2008), pp. 499-502.

investment measures, along with institutional innovations in, among other things, dispute settlement and trade policy review.

However, it is worth bearing in mind that although a single undertaking was a desideratum at the launch of the Uruguay round it only became a viable option *as part of* a wider solution to the problems that had beset the negotiations. Much like the Doha round, from the outset the Uruguay negotiations had been terse and contested.³³ Deep fractures had appeared between the positions of the contracting parties very early on into the negotiations and proved tenacious. These fractures led to frequent periods of crisis and collapse as well as a general stasis in the negotiations. It was not until an idea gathered ground that gains could also be made by reviewing and enhancing the institutional aspects of the GATT—under the auspices of the Functioning of the GATT System (FOGS)—that a solution was reached.³⁴

This switch of focus toward a programme of institutional refinement and regeneration built upon a widespread sense of frustration among contracting parties that GATT disciplines were all-too-often treated in a cursory fashion. This, in turn, created an opportune moment for a proposal to be advanced to establish a Multilateral Trade Organization (MTO) that would bring significant institutional gains.³⁵ The proposal contained, among other things, provisions for a more robust dispute settlement process; better review, notification and surveillance measures; and a commitment to improve co-ordination between the MTO, the IMF and the World Bank. At the same time, it would oversee regulations across a wider range of trade than had been the case under the GATT (which had been confined largely to trade in industrial goods)³⁶

³³ See S. P. Shukla, 'From GATT to WTO and Beyond', *UNU/WIDER Working Papers*, No. 195 (August 2000), pp. 1-65. Available at: www.wider.unu.edu/publications/working-papers/.../en.../wp195.pdf

³⁴ See Ernest H. Preeg, *Traders in a brave new world: the Uruguay round and the future of the international trading system*, (Chicago: Chicago University Press, 1995), pp. 74-78; and Rorden Wilkinson, 'Transforming our world by 2030: The multilateral trading system and the new agenda for global action', *International Trade Working Paper*, 2015/02, (London: Commonwealth Secretariat, 2015), pp. 6-7.

³⁵ The American Society of International Law and Nederlandse Vereniging voor International Recht, *Contemporary International Law Issues: Opportunities at a Time of Momentous Change—Proceedings of the Second Joint Conference*, The Hague, 22-24 July 1993, p. 300; and John H. Jackson, *Restructuring the GATT System*, (London: Pinter, 1990).

³⁶ Patrick Low, 'Potential Future Functions of the World Trade Organization', *Global Governance*, 15: 3 (2009), pp. 330-331.

bringing in services, agriculture, and trade-related intellectual property rights and investment measures.

Crucially, for the institution to be created the agreement of all parties to the negotiations had to be secured. Anything less would have left the organisation moribund. The result was a trade *and* an institutional bargain that required a common and universally binding agreement for it to be sealed. This agreement to a single undertaking was possible only because the promise of a better functioning system of rules attenuated some of the concerns that contracting parties—particularly developing countries—had about imbalances in the market access aspects of the deal, something that was wholly absent during the Doha negotiations.

However, there was a darker more coercive aspect to the Uruguay agreement. The institutional components of the agreement enabled the industrial countries to pressure their developing counterparts to sign up to the Uruguay accords (and thus the disadvantageous commercial provisions therein) for fear that they would be left out of the multilateral trading system as the United States, European Community and others transitioned across to the WTO. As Michael Finger and Julio Nogués put it,

The proposal to create a new organisation to contain and administer the Uruguay Round agreements changed the game. The GATT/WTO heavyweights announced that as soon as the new organisation existed they would withdraw from the GATT. A country that voted 'No' on joining the new organisation would leave itself out in the cold – with neither GATT disciplines nor those of the new agreement to protect it.³⁷

The uniqueness of the Uruguay single undertaking was, however, quickly forgotten and the expectation that a universal deal could be negotiated again became a key desideratum of the Doha round. For the industrial countries the gains that a single undertaking had brought ensured they were keen to repeat it in a new round. In contrast, the developing countries—who had quickly realised that irrespective of the institutional benefits of the Uruguay agreement, the deal had been considerably less

³⁷ J. Michael Finger and Julio J. Nogués, 'The Unbalanced Uruguay Round Outcome: The New Areas in Future WTO Negotiations', *The World Economy*, 25: 3 (2002), p. 334.

beneficial to them than their industrial counterparts³⁸—looked upon a second single undertaking as a way of resisting another Uruguay style bargain by capitalising on the strength in numbers that an expansion in membership had brought.

The key difference here was that the objective of the Doha round was to agree a common deal under the auspices of a *normal* trade round. It did not involve the introduction of a single undertaking as a necessary component of a solution to the ailments of a round and which was part and parcel of a wider institutional project or other such endeavour enabling members to see benefits that may nullify anomalies elsewhere in the negotiations—as Uruguay had been. Yet, it was the pressure to agree to a second single undertaking that brought into sharp relief many of the problems with the WTO’s negotiating functioning, which played—in the early years of the round at least—a crucial role in the binding together of large and complex coalitions of members, and which ultimately sealed the round’s fate.

It is worth bearing in mind that widespread dissatisfaction with the Uruguay round framed the Doha negotiations for developing countries; and the institutional bargain that facilitated Uruguay’s conclusion proved to be small beer compared to the commercial iniquities that quickly became apparent thereafter. As Sylvia Ostry famously put it, the Uruguay round was “a bum deal”, in which, *The Economist* noted, the “rich countries cut their tariffs by less ... than poor ones”, and wherein, as Nelson Mandela argued, it was ‘the preoccupations and problems of the advanced industrial economies that shaped the agreement’.³⁹

What was wrong with the Uruguay outcome and how did it shape developing country expectations in the Doha negotiations? The conclusion of the Uruguay round saw the inclusion of agreements on agriculture, and textiles and clothing within a wider suite of trade agreements administered by the soon-to-be-created WTO and the adoption of a

³⁸ Ostry, *The Post-Cold War Trading System*; also Andrew D. Mitchell and Tania Voon, ‘Operationalizing Special and Differential Treatment in the World Trade Organization: Came Over?’, *Global Governance*, 15: 3 (2009), p. 343.

³⁹ Ostry, *The Post-Cold War Trading System*, p. 28; *The Economist*, ‘White man’s shame: rich countries say free trade in good for poor countries. Pity they don’t practice what they preach’, 23 September 1999; Mandela, Nelson, Statement on the 50th Anniversary of the Multilateral Trading System, Geneva, 19 May 1998. Available at: https://www.wto.org/english/thewto_e/minist_e/min98_e/anniv_e/mandela_e.htm

range of provisions throughout the organisation's legal framework designed to ease some of the pressure for domestic legislative reform generated by the new rules. It also resulted in the adoption of agreements on services (the General Agreement on Trade in Services—GATS), intellectual property (the Agreement on Trade Related Intellectual Property Rights—TRIPs) and investment measures (the Agreement on Trade Related Investment Measures—TRIMs). Yet, while the inclusion of agriculture, and textiles and clothing rectified an existing imbalance in the GATT's commercial purview, and the addition of a few development facing but insubstantial provisions represented a step forward from the GATT-era, the introduction of new disciplines in services, intellectual property and investment measures simply generated additional advantages for the industrial states. Thus, while under Uruguay rules developing states could finally hope to benefit from the liberalisation of agricultural, and textiles and clothing markets, their lack of capacity and resources ensured that this was not to be the case in the new areas. The potential benefits of Uruguay were, however, much more compelling for the industrial states. Not only were they existing beneficiaries of trade liberalisation in areas covered by GATT rules, their economic make-up ensured they would be the principal beneficiaries of the market opportunities presented by the liberalisation of services and investment measures, and the codification of trade-related intellectual property rights.

The consequence was to further divide up the arenas of economic activity in which member states could specialise and, in so doing, magnify the challenges facing developing countries seeking to diversify their export portfolios. Moreover, not only were the industrial states better suited to taking advantage of these new rules, their ability to utilise the market opportunities presented therein would enable them to develop further competitive advantages over future market entrants. The result was to carry across the transition from GATT to WTO an asymmetry of economic opportunity that formed the basis upon the Doha round unfolded, which underpinned the tensions that existed among members, and which saw the round lurch from crisis to collapse over the course of a decade and a half.

It is unsurprising then, that the Uruguay agreements proved to be a source of frustration for developing countries; and efforts to extend further the trade agenda in the wake of Uruguay's conclusion were greeted with hostility. This was particularly the case with suggestions that the WTO's remit be strengthened to include investment, government procurement, competition policy, trade facilitation, environmental protection and, most controversially, labour standards at the 1996 Singapore ministerial conference and that the members embark on a further round of trade negotiations so soon after the conclusion of Uruguay.⁴⁰ It was also clear that not only were a number of developing countries struggling with the implementation requirements of the Uruguay round agreements, a good deal of foot-dragging and back-sliding was taking place on the part of their industrial counterparts. These tensions steadily increased coming to a head at the WTO's 1999 Seattle ministerial conference when, amid mass demonstrations outside the convention centre delegates failed to agree the launch of what was then touted as the "millennium round".

The Seattle ministerial conference failed to launch a new round because of perceptions among developing countries that their industrial counterparts were trying to press forward with a new trade agenda without first attending to existing anomalies. Moreover, given that the Uruguay round had set a precedent—and an expectation—for a single undertaking to form the basis upon which any new set of negotiations would be concluded, it was inevitable that a new set of talks would have to address the demands of developing states. Inevitably, then, the post-Seattle rehabilitation process saw a concerted effort to place development at the heart of the campaign to launch a new trade round. Eventually a concerted consensus building effort and a delicate post 9/11 global political climate proved sufficient for members to agree to a new round at the November 2001 Doha ministerial conference—officially named the "Doha Development Agenda" (DDA).

There were undoubted successes in tailoring the work programme towards areas of interest to the developing world. The Doha Ministerial Declaration was replete with

⁴⁰ Rorden Wilkinson, 'The WTO in Crisis: exploring the dimensions of institutional inertia', *Journal of World Trade*, 35: 3 (2001), pp. 397-419.

references to the needs and interests of developing countries. A Ministerial Decision on Implementation-Related Issues and Concerns was agreed and the main Ministerial Declaration made implementation issues an integral part of the work programme. The agricultural negotiations were designed to pursue substantial improvements in market access and sought to reduce (and the eventually eliminate) export subsidies and trade-distorting domestic support systems. The negotiations on non-agricultural market access (NAMA) were structured such that the reduction and elimination of tariff peaks, high tariffs, tariff escalation, tariffs affecting the export interests of developing countries and non-tariff barriers sat alongside a more traditional focus on the reduction of barriers to trade. With regard to intellectual property, a declaration on TRIPs and public health offered members greater flexibility in adhering to the TRIPs agreement in times of national health crises. And more generally, promises were made to explore the relationships between trade, debt and finance, the plight of small economies, the transfer of technology, technical co-operation and capacity building, as well as to review and strengthen special and differential provisions.

However, the balance of potential gains from the work programme remained firmly with the industrial states. In addition to the benefits resulting from the full implementation of the Uruguay accords, improvements in NAMA, aspects of the negotiations on agriculture, and a further extension of the TRIPs agreement, the Doha agenda added a commitment to begin (albeit on the basis that an “explicit consensus” should be forthcoming) negotiations in investment, government procurement, trade facilitation and competition policy (and possibly e-commerce). Moreover, the agenda put in place a specific timeframe in which negotiations would commence on these issues (subject to minor clarification, after the mid-term review of negotiations in Cancún in 2003) and stipulated that the results would form the basis of a second single undertaking. The result, despite its moniker, was that the new round promised merely to address a handful of existing anomalies of interest to developing countries in return for a further extension of the WTO’s legal framework into areas of interest to the industrial countries where there were better prospects for substantive material gain.

Unsurprisingly, the imbalances in the Doha mandate quickly became the source of developing country frustrations. These frustrations were manifest in a frenzy of coalition building that saw alliance upon (counter-)alliance of members combine and consolidate to produce a deadlock in the negotiations which, in turn, contributed to the collapse of the 2003 Cancún ministerial conference.⁴¹ Indeed, the only common ground that Cancún produced was that the round would not reach a conclusion before its scheduled 1 January 2005 deadline.

After an initial period of reflection, and much like Seattle, the post-Cancún period saw renewed energy emerge among the WTO membership. In early 2004 both the United States and European Union signalled that they were ready to negotiate the elimination of all forms of agricultural export subsidies (including credits and food aid as well as more traditional means of subsidising exports).⁴² By June 2004 then-WTO DG Supachai Panitchpakdi was praising delegates for the progress that had been made in the agricultural negotiations (albeit peppered with the obligatory encouragement to keep moving forward). Each of the principal protagonists in the Cancún showdown submitted papers outlining their preferred ways of moving forward—the Group of 20, Group of 10 and Group of 33—and the European Union again stressed its willingness to phase out export subsidies on the condition that other (largely US) forms of subsidising exports were eliminated and that an “acceptable” outcome could be reached on market access and domestic support. These developments nevertheless proved insufficient to enable members to agree a set of negotiating modalities ahead of the 2005 Hong Kong ministerial conference that would take the negotiations to the next phase. The result was a decision to scale-back expectations ahead of the Hong Kong meeting to ensure that some agreement was reached and to build upon the momentum that had gathered in the negotiations since the collapse at Cancún.

⁴¹ Amrita Narlikar and Rorden Wilkinson, ‘Collapse at the WTO: A Cancún post-mortem’, *Third World Quarterly*, 25: 3 (April 2004), pp. 447-460.

⁴² Jennifer Clapp, ‘WTO agricultural trade battles and food aid’, *Third World Quarterly*, 25: 8 (2004), p. 1444.

The conclusion of the Hong Kong ministerial conference proved to be a high point, however.⁴³ The April 2006 deadline for agreeing negotiating modalities decided at the meeting was missed; little progress was made in the negotiations generally; and the round came to an abrupt halt in July 2006. Repeated attempts thereafter failed to inject new momentum into the round and the negotiations formally collapsed in the July 2008.⁴⁴ What followed was almost 5 years of negotiating stasis. Lukewarm attempts were made to restart the negotiations. A four-year pause between ministerial conferences (between Hong Kong in 2005 and Geneva in 2009) failed to inject renewed momentum. The 2009 Geneva ministerial conference was actively engineered to take heat out of the negotiations but neither it, nor the convening of a second ministerial in Geneva two years later, succeeded in moving beyond entrenched positions.⁴⁵

It was not until the run-up to the 2013 Bali ministerial conference that negotiating began again in earnest. Even then the long running war of attrition that had followed ensured that members were unable to agree a deal ahead of the meeting. What ensued was a frenetic bout of negotiating over five long days wherein hopes were raised, dashed, raised and almost dashed again before members agreed to a small package of measures covering three broad areas (trade facilitation, agriculture, and special and differential treatment for least-developed countries).⁴⁶

The agreement reached in Bali was notable because it marked the first multilateral agreement concluded under WTO auspices since the organisation had begun operations on 1 January 1995. It was not, however, a game changing moment marking a new era in multilateral trading system correcting past imbalances or inequities, or

⁴³ Rorden Wilkinson, 'The WTO in Hong Kong: what it really means for the Doha Development Agenda', *New Political Economy*, 11: 2 (2006), pp. 291-303.

⁴⁴ Faizel Ismail, 'An assessment of the WTO Doha Round, July-December 2008', *World Trade Review* 8: 4, (2009), pp. 579-605.

⁴⁵ James Scott and Rorden Wilkinson, 'What happened to Doha in Geneva? Re-engineering the WTO's image while missing key opportunities', *European Journal of Development Research*, 22: 2 (2010), pp. 141-153; and James Scott and Rorden Wilkinson, 'The promise of "development" and the Doha Development Agenda' in Rorden Wilkinson and James Scott (eds.), *Trade, Poverty, Development: Getting beyond the WTO's Doha Deadlock*, (London: Routledge, 2013).

⁴⁶ Rorden Wilkinson, Erin Hannah and James Scott, 'The WTO in Bali: what MC9 means for the Doha Development Agenda and why it matters', *Third World Quarterly*, 35: 6 (September 2014), pp. 1032-1050.

closing the gap between developed and developing countries alike. Nor was the outcome a broad-based single undertaking. Instead, Bali continued the pattern of asymmetrical bargains by agreeing a deal that would bring greater benefits to the industrial countries (via the Agreement on Trade Facilitation) in exchange for limited concessions in agriculture (relating to public stockpiling of foodstuffs) and a small package of measures designed to help least-developed countries. In the long arc of the multilateral trading system's history, Bali was very much business as usual.

Nairobi, “retro” trade governance and the future of the multilateral order

The agreement reached in Bali came despite enduring tensions between the major players over the shape and direction of the trade agenda. Indeed, it was only after a follow up bilateral agreement had been reached between the United States and India in November 2014 extending indefinitely the protection afforded to developing country agricultural stockholding programmes from challenges under the WTO's dispute settlement mechanism until a “permanent solution” could be negotiated that the Bali outcome could finally be implemented.⁴⁷ What was obvious was that the WTO's negotiating function was still clogged with sand and a more radical solution was required if the institution's credibility was to recover its worth. The result was the reaching of an agreement in Nairobi to set the round aside for the sake of salvaging the institution, with the caveat that any future attempt to negotiate multilaterally required that Doha first be revisited.

The agreement reached in Nairobi transforms fundamentally the framework for conducting trade negotiations moving it away from one targeted at broad-based universal deals to something more lithe and multi-faceted. This transformation was widely seen as a necessary component to a rekindling of faith in the organisation's negotiating function and an important counter to “mega regional” trade deals such as the Trans-Pacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP). However, reinvigorating the WTO's negotiating function came at the expense of the Doha round and efforts to agree to a wide-ranging multilateral deal

⁴⁷ Rorden Wilkinson, ‘Changing power relations in the WTO: Why the India-U.S. trade agreement should make us worry more, rather than less, about global trade governance’, *Geoforum*, 61 (2015), pp. 13-16.

on trade measures for development. That said, Nairobi did see members agree to a package of trade measures comprising agreements on agriculture and on least-developed country issues as well as an expansion in the 1996 Information Technology Agreement (ITA) though the balance of these measures clearly favoured the industrial countries continuing the long-standing pattern of asymmetrical deals being negotiated.

In combination, these outcomes mark a critical juncture in the evolution of the multilateral trading system enabling the leading industrial members to move away from the pursuit of universal agreements wherein a balance of concessions is required that are acceptable to all members, back to one where they are more able to focus on narrow piecemeal deals that exclude troublesome states. It also sets aside the pursuit of a single undertaking, which was the primary means by which emerging powers were able to withstand and temper the ability of the United States and European Union to dominate negotiations. All of this results from a process of institutional development wherein the outcomes of moments of heightened political contestation have combined to produce a retro form of global trade governance.

The consequences of this change in the *modus operandi* of governance are significant and break with 4 decades of endeavour to conclude negotiations on a universal basis. Not only does the decision re-introduce the conclusion of small group agreements as a normal means by which negotiations are concluded, it also amounts to a recognition that the pursuit of universal agreements is too difficult without some kind of institutional bargain. This, in turn, reduces the capacity of developing countries to secure trade-offs from developed countries in return for concessions in new areas.

Conclusion

The *Financial Times* put it that “Doha is dead. Its passing should not be mourned. It opens up space for trade multilateralism to return”.⁴⁸ While this may have been a catchy strapline, the truth is a little more complex. Certainly the Doha round is moribund and there little chance it will ever be rehabilitated. However, one aspect of

⁴⁸ ‘The Doha round finally dies a merciful death’, *Financial Times*, 21 December 2015. Available at: <https://www.ft.com/content/9cb1ab9e-a7e2-11e5-955c-1e1d6de94879>

its passing should be mourned. The abandonment of the single undertaking removes irrecoverably the capacity of developing countries to have a say in the shape, direction and content of any future negotiations. They, and their interests, will not be represented as the multilateral trading system moves back to deals brokered among subsets of members on specific issues unlikely to be of interest to them (or in which they are unlikely to be allowed to participate) as the engine of further liberalisation and the *modus operandi* of system governance. Without a requirement to negotiate with members that are commercially less significant there will be no compunction for the industrial states to deliver trade gains that matter for development. The result is that Doha's passing has *not* allowed multilateralism to return. Instead, it has allowed plurilateralism to prevail, with the obvious consequences that special interest trade politics will have. This is what Lorand Bartels argues has been going on outside of the single undertaking anyway.⁴⁹ Nairobi has just brought it back inside.

Turning specifically to the role of crises, what this reading of the trials and tribulations of the Doha round reveals is a different way of understanding the locomotive aspects of system evolution. Its purpose has been to show that far from being disruptive elements, moments of crisis are actually consequences of the way the institution was created and has evolved through time. Moreover, they are important elements in securing its onward development. But these insights tell us not only about one aspect of the manner in which the institution has evolved, they also caution against analyses that focus overly on individual moments in global trade politics as barometers of system wellbeing. These shorter run perspectives tend to focus too much on the hyperbole and drama that surrounds the collapse of a ministerial conference or the stasis injected into a negotiation, inevitably bemoaning—often rather heavy-heartedly—the missed opportunity to generate genuine material gain. Whereas, a longer lens takes in the cumulative effects of periods of crisis on the bargains reached over time and their impact on the institution's evolution. As Robert Wolfe has observed, despite most GATT/WTO meetings having been 'near catastrophes ... the trading system is stronger,

⁴⁹ Lorand Bartels, 'The World Trade Organization post Nairobi: new approaches and architectures', *International Trade Working Paper*, 2016/21 (London: Commonwealth Secretariat, 2016).

deeper and wider now than it was a generation ago'.⁵⁰ However, this is not a view that comfortably or abstractly observes longer run processes of institutional development leaving the analysis to stand as mere objective study. Rather, it is one that is able to show how asymmetrical gains from multilateral trade are realised and the benefits iniquitously distributed, which in turn sharpens the case for system reform.

The final observation to draw from the passage of the Doha round is how tenacious the institution has been in serving the interests of the dominant powers. This is, in part, why some have argued that when thinking about reform of the multilateral trading system only a fundamental overhaul will halt the perpetuation of this state of affairs.⁵¹ Doing otherwise contributes to the tenacity of the institution's evolution while doing very little to ameliorate the consequences of mal-distributed trade opportunity and gain. Indeed, it is likely that until or unless a dramatic shift in the global balance of power occurs, an alternative ideological consensus develops, a viable competing institutional framework emerges, and/or a fundamental overhaul of the WTO takes place (involving an alteration of its core principles) the collapse of ministerial meetings and the onset of a post-crisis politics thereafter will continue to be features of multilateral trade regulation for some time to come—particularly when trade deals are attempted among large numbers of participants. Such a rupture in prevailing power relations would not, however, bring with it any assurances that the institutions put in place to govern the globe would be any better. Conceivably they—and any new configuration of power that ushers them in—may be far worse.

The future for the WTO and the multilateral trading system is thus mixed. On the one hand, it is clear that the Nairobi outcome will unlock some of the energy that has been absent from the multilateral system for some time and enable the WTO to preside over future agreements. On the other hand, in the absence of a universal endeavour there is very little to force the industrial countries to focus on negotiations that are of specific interest to their developing counterparts, particularly when the return to a plurilateral form of governance promises to serve their interests better than Doha did.

⁵⁰ Robert Wolfe, 'Crossing the river by feeling the stones: where the WTO is going after Seattle, Doha and Cancún', *Review of International Political Economy*, 11: 3 (2004), p. 575.

⁵¹ Wilkinson, *What's Wrong with the WTO and How to Fix it*. Also, Muzaka and Bishop, 'Doha stalemate'.

